

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

_____)	
UNITED STATES OF AMERICA,)	
Complainant,)	8 U.S.C. § 1324a Proceeding
)	
v.)	OCAHO Case No. 98A00019
)	
T.W. & SON KNITTING MILLS INC.,)	Judge Robert L. Barton, Jr.
Respondent.)	
_____)	

**FINAL DECISION AND ORDER GRANTING COMPLAINANT'S
MOTION AND ENTERING DEFAULT JUDGMENT**

(February 2, 1998)

I. Procedural History

On June 3, 1997, Complainant served a Notice of Intent to Fine (NIF) on Respondent, and, on that same date, Respondent, through its President, requested a hearing in this matter. On October 30, 1997, the Complainant filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Attached to the Complaint was the NIF and the Request for Hearing.

The Complaint contains three counts, which allege, in pertinent part, that Respondent failed to make and/or to make available for inspection the employment eligibility forms (I-9 forms) for twenty-six employees (Count I); that, as to seven other employees, Respondent failed to ensure that the employee properly completed section one of the I-9 form (Count II); and that, as to twenty-two employees, Respondent failed to complete section two of the I-9 form within three business days of the hiring date (Count III). The Complaint asserts that, because of these failures, Respondent violated 8 U.S.C. § 1324a(a)(1)(B). In the Prayer for Relief, the Complaint seeks a civil money penalty of \$19,040 for the alleged violations.

On November 5, 1997, OCAHO served the Complaint and a Notice of Hearing on the parties and mailed the copy to Respondent's President by certified mail. The green return receipt card shows that Respondent received the Complaint and Notice of Hearing on November 10, 1997. The Notice of Hearing specifically stated that the Respondent must file an answer within thirty days after receipt of the Complaint and that failure to file an answer may be deemed to constitute a waiver of

the right to appear and contest the allegations of the Complaint. The Notice of Hearing also stated that, if there is a failure to file an answer, the Administrative Law Judge may enter a judgment by default and grant all appropriate relief.

Because Respondent failed to file an answer, on January 7, 1998, Complainant filed a Motion for Default Judgment. On January 8, 1998, I issued an Order Noting Default and Requiring Respondent to Show Cause Why Complainant's Motion for Default Judgment Should Not Be Granted (Show Cause Order), which noted that no answer to the Complaint had been received, and that the Rules of Practice require such an answer. The Order specifically warned that, if an answer was not served, a default judgment might be entered. This Order was served on Respondent both by certified mail and by first class mail. A green return receipt card was returned by the U.S. Postal Service which, shows that Respondent received the Show Cause Order on January 12, 1998.

The Show Cause Order references the Rules of Practice and specifically states that the Rules of Practice require that the Respondent file an answer to the complaint, that failure to do so shall be considered as a waiver of the right to appear and contest the allegations of the complaint, and that the Judge may enter a default judgment if no answer is filed, see 28 C.F.R. § 68.9(a), (b) (1997). Moreover, the Show Cause Order directs Respondent to file an answer within twenty days of the date of the Order and to show good cause why the answer was late. The Show Cause Order further states that, if Respondent fails to comply with the Order, I may grant Complainant's Motion for Default Judgment and enter a civil penalty against Respondent without any further proceedings.

II. Discussion

With respect to the failure to file an answer to the complaint, as was explained in the Show Cause Order, the Rules of Practice require a respondent to serve an answer to the complaint and provide that failure to do so shall constitute a default. 28 C.F.R. § 68.9 (1997). The Rules also provide that a party shall be deemed to have abandoned a request for hearing if the party or his representative fails to respond to orders issued by the Administrative Law Judge. 28 C.F.R. § 68.37(b) (1997). Failure to respond to an order to show cause invites a judgment of default, especially where, as here, it appears that Respondent has ignored the Court's orders and de facto has abandoned the request for a hearing. See United States v. Broker's Furniture and Mfg., Inc., 5 OCAHO 555 (Ref. No. 789) (1995),¹ 1995 WL 706038; United States v. Hosung Cleaning Corp., 4 OCAHO 776 (Ref. No. 681) (1994), 1994 WL 645787. Even in cases where they appeared without

¹ Citations to OCAHO precedents in bound Volumes 1-2, Administrative Decisions Under Employer Sanctions and Unfair Immigration-Related Employment Practices Laws of the United States, and bound Volumes 3-5, Administrative Decisions Under Employer Sanctions, Unfair Immigration-Related Employment Practices and Civil Penalty Document Fraud Laws of the United States, reflect consecutive decision and order reprints within those bound volumes; pinpoint citations to pages within those issuances are to specific pages, seriatim, of the pertinent volume. Pinpoint citations to OCAHO precedents in volumes subsequent to Volume V, however, are to pages within the original issuances.

counsel, parties that failed to obey Judges' orders were found to have abandoned their requests for hearing or to have abandoned their complaints. See United States v. Erlina Fashions, Inc., 4 OCAHO 586 (Ref. No. 656) (1994), 1994 WL 526369; Holguin v. Dona Ana Fashions, 4 OCAHO 142 (Ref. No. 605) (1994), 1994 WL 269357; Brooks v. Watts Window World, 3 OCAHO 1708 (Ref. No. 570) (1993), 1993 WL 566122; Speakman v. Rehabilitation Hosp. of South Texas, 3 OCAHO 798 (Ref. No. 476) (1992), 1992 WL 535634; Palancz v. Cedars Medical Ctr., 3 OCAHO 503 (Ref. No. 443) (1992), 1992 WL 535580. Here, although Respondent is not represented by counsel, it has been provided with a copy of the Rules of Practice and was informed in both the Notice of Hearing and the Show Cause Order that it must file a written answer to the Complaint.

Given the failure by Respondent to answer the Complaint or Motion for Default Judgment or to take any other action to defend its interests in this matter, I must conclude that Respondent has abandoned its Request for Hearing. Respondent is in default not only for failure to answer the Complaint, but also for failure to respond to the Show Cause Order. See 28 C.F.R. §§ 68.9(b); 68.37(b)(1) (1997).

III. Findings, Conclusions and Order

1. Complainant's Motion for Default Judgment is granted;
2. I find that each and every paragraph of the Complaint, including the prayer for relief, has been admitted by Respondent by its failure to answer the Complaint;
3. Respondent shall pay a civil money penalty of \$ 19,040; and
4. The notice of hearing in this case is canceled.

Pursuant to the Rules of Practice, 28 C.F.R. § 68.53(a)(1), a party may file with the Chief Administrative Hearing Officer (CAHO) a written request for review, with supporting arguments, by mailing the same to the CAHO at the Office of the Chief Administrative Hearing Officer, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2519, Falls Church, Virginia 22041. The request for review must be filed within 30 days of the date of the decision and order. The CAHO also may review the decision of the Administrative Law Judge on his own initiative. The decision issued by the Administrative Law Judge shall become the final order of the Attorney General of the United States unless, within 30 days of the date of the decision and order, the CAHO modifies or vacates the decision and order. See 8 U.S.C. § 1324a(e)(7); 28 C.F.R. § 68.53(a).

Regardless of whether a party appeals this decision to the Chief Administrative Hearing Officer, a person or entity adversely affected by a final order issued by the Administrative Law Judge or the CAHO may, within 45 days after the date of the Attorney General's final agency decision and order, file a petition in the United States Court of Appeals for the appropriate circuit for the review of the final decision and order. A party's failure to request review by the CAHO shall not prevent

a party from seeking judicial review in the appropriate circuit's Court of Appeals. See 8 U.S.C. § 1324a(e)(8); 28 C.F.R. § 68.53(a)(3).

ROBERT L. BARTON, JR.
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February, 1998, I have served the foregoing Final Decision and Order Granting Complainant's Motion and Entering Default Judgment on the following persons at the addresses shown, by first class mail, unless otherwise noted:

Mimi Tsankov
Assistant District Counsel
Immigration and Naturalization Service
P.O. Box 2669
New York, NY 10008-2669
(Counsel for Complainant)

Vasa Tapalaga, President
T.W. & Son Knitting Mills, Inc.
54 Knickerbocker Ave., 2nd Floor
Brooklyn, NY 11237
(Respondent)
(Certified mail and first class mail)

Dea Carpenter
Associate General Counsel
Immigration and Naturalization Service
425 "I" Street, N.W., Room 6100
Washington, D.C. 20536

Office of the Chief Administrative Hearing Officer
Skyline Tower Building
5107 Leesburg Pike, Suite 2519
Falls Church, VA 22041
(Hand delivered)

Linda Hudecz
Legal Technician to Robert L. Barton, Jr.
Administrative Law Judge
Office of the Chief Administrative Hearing Officer
5107 Leesburg Pike, Suite 1905
Falls Church, VA 22041
Telephone No.: (703) 305-1739
FAX NO.: (703) 305-1515